

17W

Practitioner's Docket No. 99049-1/815.008-3-1

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Chan

Application No: 10/730,850

Group No.: 1744

Filed: December 9, 2003

Examiner: Randall E. Chin

For: MODULAR ELECTRIC TOOTHBRUSHES

**Mail Stop Amendment**  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

**TRANSMITTAL OF INFORMATION DISCLOSURE STATEMENT  
BEFORE MAILING DATE OF EITHER A FINAL ACTION  
OR NOTICE OF ALLOWANCE (37 C.F.R. § 1.97(c))**

**NOTE:** 37 C.F.R. 1.97: "(c) An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, provided that the information disclosure statement is filed before the mailing date of any of a final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application, and it is accompanied by one of:

(1) The statement specified in paragraph (e) of this section; or

(2) The fee set forth in § 1.17(p)."

**NOTE:** "If a final action or notice of allowance is mailed in an application and later withdrawn, the application will be considered as not having had a final action or notice of allowance mailed for purposes of considering an information disclosure statement." Notice of April 20, 1992 (1138 O.G. 37-41, 39).

**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***

(When using Express Mail, the Express Mail label number is mandatory;  
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I hereby certify that, on the date shown below, this correspondence is being:

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**37 C.F.R. § 1.8(a)**

**37 C.F.R. § 1.10 \***

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**TRANSMISSION**

☐ facsimile transmitted to the Patent and Trademark Office, (571) 273-8300.

Janet Hames

Signature

Date: 11/15/2007

Janet Hames

(type or print name of person certifying)

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

(Transmittal of Information Disclosure Statement before Mailing Date of Either a Final Action Or Notice of Allowance [8-4]—page 1 of 3)

**NOTE:** 37 C.F.R. § 1.704(d): "A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable."

**NOTE:** "If information submitted during the period set forth in 37 C.F.R. 1.97(c) with a certification is used in a new ground of rejection on unamended claims, the next Office action will not be made final since in this situation it is clear that applicant has submitted the information to the office promptly after it has become known and the information is being submitted prior to a final determination on patentability by the Office. However, the information submitted with a certification can be used in a new ground of rejection and the next Office action made final, if the new ground of rejection was necessitated by amendment of the application by applicant. Where the information is submitted during this period with a fee, the examiner may use the information submitted, e.g., printed publication or evidence of public use, and make the next Office action final whether or not the claims have been amended, provided that no other new ground of rejection which was not necessitated by amendment to the claims is introduced by the examiner. See MPEP 706.07(a). If a new ground of rejection is introduced that is neither necessitated by an amendment to the claims nor based on the information submitted with the fee set forth in 37 C.F.R. § 1.17(p), the Office action shall not be made final." Notice of April 20, 1992 (1138 O.G. 37-41, 39).

**WARNING:** "A petition for suspension of action to allow applicant time to submit an information disclosure statement will be denied as failing to present good and sufficient reasons, since 37 C.F.R. § 1.97 provides adequate recourse for the timely submission of prior art for consideration by the examiner." Notice of July 6, 1992 (1141 O.G. 63). But see § 103(b) and (c), limited suspension of action in a continued prosecution application (CPA) filed under § 1.53(d) and in a request for continued examination (RCE) under § 1.114.

**WARNING:** No extension of time can be had under 37 C.F.R. 1.136 (a) or (b) for filing an IDS. 37 C.F.R. 1.97(f).

### **TIME OF TRANSMITTAL OF ACCOMPANYING INFORMATION DISCLOSURE STATEMENT**

1. The information disclosure statement transmitted herewith is being filed **after** three months of the filing date of this national application or the date of entry of the national stage as set forth in § 1.491 in an international application or after the mailing date of the first Office action on the merits, whichever event occurred last but **before** the mailing date of either:
  - (1) a final action under § 1.113 or
  - (2) a notice of allowance under § 1.311,whichever occurs first.

### **STATEMENT OR FEE**

2. Accompanying this transmittal is

(check either A or B below)

A. ☐ a statement as specified in 37 C.F.R. § 1.97(e).

**OR**

B. ☒ the fee set forth in 37 C.F.R. § 1.17(p) for submission of an information disclosure statement under § 1.97(c). (\$180.00).

(Transmittal of Information Disclosure Statement before Mailing Date of Either a Final Action Or Notice of Allowance [6-4]—page 2 of 3)

### METHOD OF PAYMENT OF FEE

3.

- ☐ Attached is a ☐ check ☐ money order in the amount of \$ \_\_\_\_\_
- ☒ Authorization is hereby made to charge the amount of \$ 180.00
- ☒ to Deposit Account No. 03-1920
- ☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should *not* be included on this form as it may become public.

- ☒ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

Reg. No. 30,927

Tel. No.: (203) 261-1234

Customer No.: 45980

  
\_\_\_\_\_  
**SIGNATURE OF PRACTITIONER**

K. Bradford Adolphson

Ware, Fressola, Van der Sluys & Adolphson LLP

\_\_\_\_\_  
(type or print name of practitioner)

Bradford Green, Bldg. 5, 755 Main Street

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P.O. Box 224, Monroe CT 06468  
\_\_\_\_\_

(Transmittal of Information Disclosure Statement before Mailing Date of Either a Final Action Or Notice of Allowance [8-4]—page 3 of 3)

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Patent application

of

Inventor(s)

for

Title of invention

the specification of which is being transmitted herewith

OR

In re application of: Chan

Application No.: 10 / 730,850

Group No.: 1744

Filed: December 9, 2003

Examiner: Randall E. Chin

For: MODULAR ELECTRIC TOOTHBRUSHES

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

## INFORMATION DISCLOSURE STATEMENT

## CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\*

(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

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37 C.F.R. § 1.8(a)

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## TRANSMISSION

☐ facsimile transmitted to the Patent and Trademark Office, (571) 273-8300.

Date: 11/15/2007

Signature

Janet Hames

(type or print name of person certifying)

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

(Information Disclosure Statement [8-1]—page 1 of 9)

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NOTE: "An information disclosure statement shall be considered by the Office if filed by the applicant within any one of the following time periods:

- (1) Within three months of the filing date of a national application other than a continued prosecution application under § 1.53(d);
- (2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application;
- (3) Before the mailing date of a first Office action on the merits; or
- (4) Before the mailing date of a first Office action after the filing of a request for continued examination under § 1.114."

37 C.F.R. § 1.97(b).

NOTE: "Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section." 37 C.F.R. § 1.56(a).

"Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of patentability.

"A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability." 37 C.F.R. § 1.56(b)

"Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) each inventor named in the application;
- (2) each attorney or agent who prepares or prosecutes the application; and
- (3) every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application." 37 C.F.R. § 1.56(c).

NOTE: The "duty as described in § 1.56 will be met so long as the information in question was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98 before issuance of the patent." Notice of January 9, 1992, 1135 O.G. 13 -25 at 17.

WARNING: "No information disclosure statement may be filed in a provisional application." 37 C.F.R. § 1.51(d).

### List of Sections Forming Part of This Information Disclosure Statement

The following sections are being submitted for this Information Disclosure Statement:

(check sections forming a part of this statement: discard unused sections  
and number pages consecutively)

1. ☒ Preliminary Statements
2. ☒ FORMS PTO/SB/08A and 08B (formerly FORM PTO-1449)
3. ☐ Statement as to Information Not Found in Patents or Publications
4. ☐ Identification of Prior Application in Which Listed Information Was Already Cited and for Which No Copies Are Submitted or Need Be Submitted
5. ☐ Cumulative Patents or Publications

6. ☒ Copies of Listed Information Items Accompanying This Statement
7. ☐ Concise Explanation of Non-English Language Listed Information Items
  - 7A. ☐ EPO Search Report
  - 7B. ☐ English Language Version of EPO Search Report
8. ☐ Translation(s) of Non-English Language Documents
9. ☒ Concise Explanation of English Language Listed Information Items (Optional)
10. ☒ Identification of Person(s) Making This Information Disclosure Statement

*(complete the following, if appropriate)*

Sections \_\_\_\_\_, respectively, have been continued on ADDED PAGE(S).

NOTE: "Once the minimum requirements are met, the examiner has an obligation to consider the information."  
Notice of April 20, 1992 (1138 O.G. 37-41, 37).

## Section 6. Copies of Listed Information Items Accompanying This Statement

NOTE: 37 C.F.R. § 1.98(a)(2) requires that any information disclosure statement filed under § 1.97 shall include:  
"A legible copy of:

- (i) Each U.S. patent application publication and U.S. and foreign patent;
- (ii) Each publication or that portion which caused it to be listed;
- (iii) For each cited pending U.S. application, the application specification including the claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion; and
- (iv) All other information or that portion which caused it to be listed; . . . "

Legible copies of all items listed in Forms PTO/SB/08A and 08B (formerly Form PTO-1449) accompany this information statement.

*(complete the following, if applicable)*

☒ Exception(s) to above:

- ☐ Items in prior application, from which an earlier filing date is claimed for this application, as identified in Section 4.
- ☐ Cumulative patents or publications identified in Section 5.

Copies of U.S. patents and published applications are no longer required pursuant to the Official Gazette Notice dated August 5, 2003.

## **Section 7. Concise Explanation of Non-English Language Listed Information Items**

**NOTE:** 37 C.F.R. § 1.98(a)(3) provides that any information disclosure statement filed under § 1.97 shall include:

*"(i) A concise explanation of the relevance, as it is presently understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information, of each patent, publication, or other information listed that is not in the English language. The concise explanation may be either separate from applicant's specification or incorporated therein.*

*(ii) A copy of the translation of a written English-language translation of a non-English-language document, or portion thereof, is within the possession, custody, or control of, or is readily available to any individual designated in § 1.56(c)."*

**NOTE:** "[T]he explanation required is limited to the relevance as understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information at the time the information is submitted to the Office." Notice of January 9, 1992, 1135 O.G. 13-25 at 14. See § 609A(3), M.P.E.P. 8th Edition.

**NOTE:** "The concise explanation requirement for non-English language information may be met by submission of an English language version of the search report indicating the degree of relevance found by the foreign office." Notice of January 9, 1992, 1135 O.G. 13-25, at 14 and 20. See § 609A(3), M.P.E.P. 8th Edition.

**NOTE:** "If a complete translation of the information into English is submitted with the non-English language information, no concise explanation is required." § 609A(3), M.P.E.P., 8th Edition.

**WARNING:** "The requirement in § 1.98(a)(3) for a concise explanation of non-English language information does not apply unless the relevance of the information differs from its relevance as explained in the prior application. See § 609, M.P.E.P., 8th Edition.

**NOTE:** When an English translation of the information is submitted with the foreign language information, no concise explanation is required. An English language equivalent application may be submitted to fulfill this requirement if it is, in fact, a translation of a foreign language application being listed in an information disclosure statement. There is no requirement for the translation to be verified. Submission of an English language abstract of a reference may fulfill the requirement for a concise explanation. See § 609A(3), M.P.E.P., 8th Edition.

*This may be an explanation of which portion of the reference is particularly relevant, to which claims it applies, or merely an "X", "Y", or "A" indication on a search report. See § 609A(3), M.P.E.P., 8th Edition.*

**NOTE:** The requirement for a concise explanation of non English language information would not be satisfied by a statement that a reference was cited in the prosecution of a United States application which is not relied on under 35 U.S.C. 120. See § 609A(3), M.P.E.P., 8th Edition.

The concise explanation of the relevance of non-English language information can be found in the accompanying Japanese Office Action dated October 2, 2007 (English translation provided).

(Information Disclosure Statement—Section 7. Concise Explanation of Non-English Language Listed Information Items [6-1]—page 5 of 9)



## Section 8. Translation(s) of Non-English Language Documents

NOTE: 37 C.F.R. § 1.98(a)(3) provides that any information disclosure statement filed under § 1.97 shall include:

*"(ii) A copy of the translation of a written English-language translation of a non-English-language document, or portion thereof, is within the possession, custody, or control of, or is readily available to any individual designated in § 1.56(c)."*

NOTE: *"The Office does not intend to require translations unless they have been reduced to writing and are actually translations of what is contained in the non-English language information. Applicants should note, however, that most examiners do not have the ability to understand information which is not in English and that the Office will not routinely translate information submitted in a non-English language. The examiner will consider the information insofar as it is understood on its face, e.g., drawings, chemical formulas, English language abstracts, but will not have the information translated unless it appears to be necessary to do so. Applicants are required to aid the examiner by complying with the requirements for a concise explanation in § 1.98(a)(3) for information submitted in a non-English language." Notice of January 9, 1992, 1135 O.G. 13-25, at 21.*

NOTE: *"The examiner will indicate that the non-English language information has been considered in the same manner as consideration is indicated for information submitted in English." Notice of April 20, 1992 (1138 O.G. 37-41, 41). See § 609C(2), M.P.E.P., 8th Edition.*

NOTE: *The translation need not be verified. Section 609A(3), M.P.E.P., 8th Edition.*

NOTE: *The examiner should not require that a translation be filed by the applicant. See § 609C(2), M.P.E.P., 8th Edition.*

NOTE: *There is no requirement for the translation to be verified. See § 609(A)(3), M.P.E.P., 8th Edition.*

- ☐ Submitted herewith is an English translation of the following foreign language patents, publications or information or of those portions of those patents, publications or information considered to be material:

*(complete the following, if applicable)*

- ☒ No English language translations of the foreign language patents, publications or information or parts thereof are readily available, except for those listed above.
- ☐ The following foreign language documents submitted are believed to be the equivalent or substantial equivalent of the English language documents identified below, which are also submitted herewith.

## **Section 9. Concise Explanation of English Language Listed Information Items (OPTIONAL)**

*NOTE: "Applicants may, if they wish, provide a concise explanation of why English-language information is being submitted and how it is understood to be relevant. Concise explanations are helpful to the Office, particularly where documents are lengthy and complex and applicant is aware of a section that is highly relevant to patentability or where a large number of documents are submitted and applicant is aware that one or more are highly relevant to patentability." Notice of April 20, 1992 (1138 O.G. 37-41, 38). See also § 609, M.P.E.P., 8th Edition.*

The relevance of the accompanying citations is submitted on the basis of the accompanying Canadian Office Action dated May 30, 2007 which is in the English language.

**Section 10. Identification of Person(s) Making This Information Disclosure Statement**

The person making this statement is

*(check each applicable item)*

- (a) ☐ the inventor(s) who signs below

\_\_\_\_\_  
SIGNATURE OF INVENTOR

\_\_\_\_\_  
*(type name of inventor who is signing)*

- (b) ☐ an individual associated with the filing and prosecution of this application (37 C.F.R. § 1.56(c))

\_\_\_\_\_  
SIGNATURE OF INVENTOR

\_\_\_\_\_  
*(type name of inventor who is signing)*

- (c) ☒ the practitioner who signs below on the basis of the information:

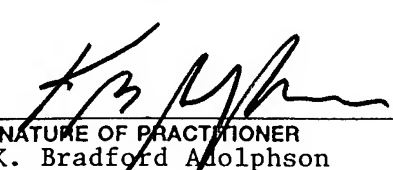
*(check each applicable item)*

- ☐ supplied by the inventor(s).  
☐ supplied by an individual associated with the filing and prosecution of this application. (37 C.F.R. § 1.56(c))  
☒ in the practitioner's file.

Reg. No.: 30,927

Tel. No.: (203) 261-1234

Customer No.: 45980

  
\_\_\_\_\_  
SIGNATURE OF PRACTITIONER

K. Bradford Adolphson

Ware, Fressola, Van der Sluys & Adolphson LLP

\_\_\_\_\_  
*(type or print name of practitioner)*

Bradford Green, Bldg. 5, 755 Main Street

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PO Box 224, Monroe CT 06468



Office de la propriété  
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du Canada

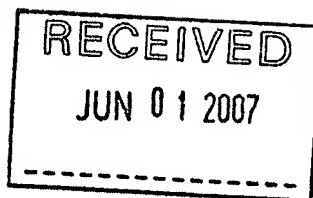
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Industry Canada  
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May 30, 2007

**MOFFAT & CO.**  
Box 2088  
Station D  
OTTAWA Ontario  
K1P 5W3



**Application No.** : **2,465,486**  
**Owner** : CHURCH & DWIGHT CO., INC.  
**Title** : **MULTI-MOTION TOOTHBRUSH**  
**Classification** : A61C 17/34 (2006.01)  
**Your File No.** : **2534-123**  
**Examiner** : Sean Lapalme *jr. eng.*

YOU ARE HEREBY NOTIFIED OF A REQUISITION BY THE EXAMINER IN ACCORDANCE WITH SUBSECTION 30(2) OF THE *PATENT RULES*. IN ORDER TO AVOID ABANDONMENT UNDER PARAGRAPH 73(1)(a) OF THE *PATENT ACT*, A WRITTEN REPLY MUST BE RECEIVED WITHIN 6 MONTHS AFTER THE ABOVE DATE.

This application has been examined taking into account the:

Description, pages 4, 5, 7-12 and 15, as received on October 4, 2006 during the national phase;  
Claims, as originally filed; and  
Drawings, pages 3, 4, 11 and 12, as received on October 4, 2006 during the national phase.

The number of claims in this application is 21.

The search of the prior art has revealed the following:

References Applied:

Chinese Patent

330411	April 21, 1998	A61C 17/16	Chiou et al.
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Japanese Application

05-146313	June 15, 1993	A46B 7/06	Masaki
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Chiou et al. disclose an electric toothbrush.

Masaki discloses a toothbrush for an electrically driven toothbrush set.

The examiner has identified the following defects in the application:

Claims 1-4, 14-17 and 21 do not comply with paragraph 28.2(1)(b) of the *Patent Act*. Chiou et al. disclosed the claimed subject matter before the claim date.

Chiou et al. disclose an electric toothbrush comprising a handle (11) having a motor (2) disposed therein; a head (13) having a longitudinal axis; a neck (12) disposed between said handle (11) and said head (13); a first bristle holder (7) associated with said head (13) which rotates; a second bristle holder (6) associated with said head which reciprocates in generally the same direction as said longitudinal axis; a shaft (5) at least partially disposed within said neck (12), said shaft (5) being operatively connected to said motor (2) and at least one of said first and second bristle holders (6,7); said shaft (5) comprising a bend (52) defining a cam; and a cam follower (67) depending from a bottom surface of said second bristle holder (6) (See Figs. 1, 2 and 4).

Claims 1, 3-6, 14 and 21 do not comply with paragraph 28.2(1)(b) of the *Patent Act*. Masaki disclosed the claimed subject matter before the claim date.

Masaki discloses an electric toothbrush comprising a handle having a motor (10) disposed therein; a head having a longitudinal axis; a neck disposed between said handle and said head; a first bristle holder (27d) associated with said head which oscillates; a second bristle holder (30) associated with said head which reciprocates in generally the same direction as said longitudinal axis; a shaft (25) at least partially disposed within said neck, said shaft (25) being operatively connected to said motor (10) and at least one of said first and second bristle holders (27d, 30) (See Figs. 1 and 2).

Claim 7 does not comply with section 28.3 of the *Patent Act*. The subject matter of this claim would have been obvious on the claim date to a person skilled in the art or science to which it pertains having regard to Masaki .

In addition to that which is described above, Masaki further discloses a fixed connection between the shaft (25) and the second bristle holder (30).

That which is not taught by Masaki, namely a pin connecting said shaft (25) and said second bristle holder (30), is held to be an obvious design choice available to one with expected skills.

Claims 1 and 21 are indefinite and do not comply with subsection 27(4) of the *Patent Act*. Claims containing a negative expression such as "does not rotate or oscillate" is objectionable in that claims should generally set forth what the invention is or does, and not what it is not or does not do.

Claims 9, 10 and 20 are indefinite and do not comply with subsection 27(4) of the *Patent Act*. The following expressions have no antecedents:

"said pin" (claims 9 and 10, lines 1 and 1)

"the cam" (claim 20, line 1)

"the driven shaft" (claim 20, line 2)

A statement in an application, such as found on page 6, line 20 which incorporates by reference any other document, does not comply with subsection 81(1) of the *Patent Rules*.

The figures do not comply with section 83 of the *Patent Rules*. As the alleged invention admits of illustration by means of drawings, the inclusion of figures 18-27 is considered to be improper. The applicant is required to submit replacement pages containing drawings of the alleged invention.

With respect to the drawings as a whole, the applicant is invited to submit drawings of higher quality than those currently on file, if available (See, for example, Figs. 3-6).

In view of the foregoing defects, the applicant is requisitioned, under subsection 30(2) of the *Patent Rules*, to amend the application in order to comply with the *Patent Act* and the *Patent Rules* or to provide arguments as to why the application does comply.

Sean Lapalme jr. eng.  
Patent Examiner  
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2465486A.scl